In the High Court of Judicature at Madras

Dated: 11/12/2002

Coram

The Honourable Mr.Justice R. Jayasimha Babu
and
The Honourable Mrs.Justice Prabha Sridevan

Writ Petition No.17858 of 2002

Ka.Jeevanandan
Additional Director of
Ex-Servicemen Welfare,
Chennai 600 003 ..... Petitioner

-Vs-

1. Union of India represented
by secretary to Government,
Ministry of Personnel, Public
Grievances and Pensions,
Department of Personnel and
Training, New Delhi.

2. Union Public Service Commission,
represented by its Secretary,
New Delhi 110 001.

3. State of Tamil Nadu represented
by Chief Secretary to Government,
Public (Special -A) Department,
Fort St.George, Chennai - 9.

4. A.C.Mohan Doss,
Sub Collector, Tiruvallur.

5. S.Ramachandran,
Sub-Collector, Villupuram.

6. The Central Administrative Tribunal,
Chennai bench, High Court Buildings,
Chennai - 600 104 represented by
its Registrar ..... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issue of writ of certiorarified mandamus to call for the records
comprised in the proceedings of the 1st respondent dated 13.12 .1999 in

F.No.140157/7/99-AIS (1) interview records of the second respondent and of third respondent dated 25.12.1999 in G.O. Ms. No.1882 and 1884 Public (Special-A) and the annual confidential reports and as confirmed by the judgment of the sixth respondent dated 09.06.2000 in OA. No.23 of 2000 and quash the same as arbitrary, illegal and unconstitutional and consequently direct respondents 1 to 3 to adhere to the law declared by the apex Court and Kothari Committee's recommendations and make revised selections in the light of the principles laid down by the Supreme Court in Ashok Kumar Yadav's case and recommendations of Kothari Committee.

!For Petitioner : Mr. Mohan Parasaran, Senior
Counsel for Mr. Satish Parasaran

^For Respondents 1 & 2 : Mr. V.T. Gopalan,
Additional Solicitor General
for Mr. SU. Srinivasan

For Respondent 3 : Mr. S.T.S. Murthy,
Special Government Pleader

For Respondents 4 & 5 : No appearance

:ORDER

(Order of the Court was made by
R.Jayasimha Babu, J.)

The petitioner was an aspirant for appointment by selection to the Indian Administrative Service under the non-civil service quota which is fifteen per cent of one-third of the strength of the service, two third of the service being recruited directly after competitive examinations followed by interviews by the Union Public Service Commission, and 85 per cent of one-third being recruited by way of promotion from among those in the State Civil Services.
2. Recruitment by promotion or selection to the Indian Administrative Service is governed by Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954. Rule 8 provides for recruitment by promotion or selection by appointment to State and Joint Cadre. Rule 9 prescribes the number of persons to be recruited under Rule 8. Eligibility, mode of selection and appointment to the service, against the selection quota from among persons "....of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State who holds gazetted post in a substantive capacity" are dealt with in Regulation 3 of the Indian Administrative Service (Appointment by Selection) Regulations, 1956, and which reads as under :
Rule 3. Eligibility, mode of selection and appointment to the service:-- (1) In accordance with the provisions contained in sub-rule (2) of Rule 8 of the Recruitment Rules, the State Government may, from time to time, consider the cases of persons not belonging to the State Civil Service but serving in connection with the affairs of the State or States in the case of Joint Cadres who --

(i) are of outstanding merit and ability; and
(ii) have completed not less than 12 years of continuous service in a gazetted post under the State Government or in the case of joint Cadre, under any one of the State Governments constituting the Joint Cadre, holding that post in a substantive capacity and propose the names of others suitable for appointment to the service :
(Provided that the State Government shall not ordinarily consider the cases of persons who have attained the age of 52 years.
Note:-- The conditions regarding length of service and age referred to in the sub-regulation (1) shall be determined with reference to the (1st day of April of the year in which the case of the persons are considered :
(Provided further that the number of officers proposed for the consideration of the Selection Committee under sub-regulation (2) shall not exceed five times the number of vacancies to be filled in during the following year.
(2) The Selection Committee set up in accordance with Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1953, shall consider the proposals of the State Government made in sub-regulation (1) and recommended the names of such of these officers, if any, but not exceeding the number of vacancies sought to be filled up by the State Government concerned under these regulations during the next 12 months, as are in their opinion, suitable for appointment to the Service.
(2-A) The suitability of a person for appointment to the service shall be determined by a scrutiny of his confidential roll and by interviewing him.
(3) The recommendations of the Selection Committee made under subregulation (2) shall be placed before the State Government concerned and the latter, shall forward those recommendations to the commission for approval along with --
(i) the confidential record of the officers concerned; and
(ii) the observations, if any, of the State Government on the recommendations of the Selection Committee.
(4) On their being finally approved by the Commission, appointments of such officers to the Service shall be made by the Central Government.
(4-A) Notwithstanding anything contained in sub-regulation (4), the Central Government may not appoint any person to the Service under these regulations if it is of the opinion that, during the period intervening between the final approval by the commission and the date of proposed appointment there occurs any deterioration in the work of such office or there is any other ground which render him unsuitable for appointment to the service or, it is necessary and expedient so to do in public interest:

Provided that no such decision shall be taken the Central government without consulting the commission.'

(5) Every person recommended by the Selection Committee as suitable for appointment to the Service who has not attained the age of 52 years on the date on which such recommendation is finally approved by the Commission shall undergo such training in the Lal Bahadur Shastri National Academy of Administration the State Training institutions and other established training institutions in the country for such period as the Central Government may consider necessary."

3. The Regulation does not prescribe the extent of weightage to be given to the interview. In the affidavit filed by the Under Secretary to the Union Public Service Commission in this Court, i s been stated at paragraph 13 thus:

" From the Regulations, it is obvious that the framers of the Regulations did not stipulate the break-up of the percentage for assessment of service records and for personal interview. As such, the onus for deciding the percentage falls on the Commission, which is an independent and constitutional authority and is the qualified authority in such matters. Therefore, the Commission have taken a decision to grant 50% marks for assessment of service records and 50% marks for personal interview. These norms are uniformly applied in the matter of Appointment by Selection to the IAS of all States/Cadres."

It is thus obvious that it is the Union Public Service Commission which fixes this percentage of marks allotted for the interview, and this is not a percentage fixed ad hoc by the Interviewing Committee for this interview alone or for this State alone. The method adopted for assessing the petitioner is a method which has apparently been in vogue for well over forty years and has been applied uniformly for all such selections.

4. Petitioner's case was that he had received a very high grading for his performance in the confidential records for the ten years preceding the year 1999 in which year he was interviewed by the Interviewing Committee which considered the cases of the Officers of the State Government for appointment to the Indian Administrative Service. That interviewing Committee consisted of the Chairman/Member of the Union Public Service Commission, two Officers of the rank of the Joint Secretary to the Government of India, the Chief Secretary of the State and three other senior officers of the State Government.

5. According to the applicant, the Interviewing Committee was in error in allocating 50% marks for the interview, and only 50% for the assessment of the confidential records. The petitioner was not selected, as two others, one of whom had received the same score as that of the applicant in relation to his confidential records, were given higher marks at the interview and they became eligible to fill the two vacancies which were filled in that year under this quota.

6. The petitioner had contended before the Chennai Bench of the Central Administrative Tribunal that the allocation of 50% marks was arbitrary and unconstitutional and had relied upon the decision of the Constitution Bench of the Supreme Court in the case of Ashok Kumar Yadav Vs. State of Haryana, (1985) 4 SCC 417. That was a case where the Haryana Public Service Commission for recruitment to the Haryana Executive Service had assigned 22.2% of the marks for the interview which followed the competitive examination for the general candidates, and 33.3% for those who were ex-Service Officers. Though the Court held that the marks so allocated had infected the selection process with the vice of arbitrariness, the actual selections were not interfered with.

7. No question of making a selection after a competitive examination arises for consideration here. The petitioner is an Officer in the State Government who has served for over twenty years. He along with other Officers, who had put in the requisite years of service, were candidates for

selection to the small number of posts in the Indian Administrative Service available for being filled from among the non State Civil Service Officers of the State Government.

8. The fifty per cent of the marks has been allocated for the interview conducted by a High Level Committee. The composition of the Committee is such as to ensure the presence of persons with long years of experience in the field of administration and persons who have attained high status within the hierarchy, and whose knowledge of the requirements of administration and whose ability to assess the Officers outside the Indian Administrative Service for being appointed to the Indian Administrative Service is beyond any dispute or question. The Committee had also on it a Member of the Public Service Commission which is the expert body in the matter of recruitment to the public services, and which has accumulated expertise in the matter of assessment of the suitability of candidates for recruitment to the various posts in the public services of the Union.

9. The assessment of the candidates made by this Interviewing Committee certainly is an important part of the total process of evaluation. If the confidential reports alone are adopted as the criteria, then, the assessment made by the Officers who wrote the reports would become the determining factor. The Officers who assess the performance of the candidates had done so, not with a view to decide as to whether the person assessed would be suitable at a later point of time for being made a Member of the Indian Administrative Service. The limited purpose of the assessment was to evaluate the work done during the year and his suitability for promotion to the immediately higher post to which he was eligible. A larger vision required to decide on the suitability of the candidate for entry into the Indian Administrative Service which would entail the person recruited to that service being called upon to discharge posts of far higher responsibility and contribute to the policy making, is better done by an expert body like the interviewing Committee, the composition of which has already been referred to. The assignment of 50% for the interview and other 50% for the confidential records which records would show the past performance of the candidate, as also his strengths and weaknesses, cannot be regarded as arbitrary.

10. In the matter of number of marks allowed to be assigned in the viva voce test in the process of recruitment to the post at higher level of service, no hard and fast rule can be laid down, as pointed out by a three Judge Bench of the Apex Court in the case of Lila Dhar Vs. State of Rajasthan, (1981) 4 SCC 159, which decision incidentally was referred to with approval by the Constitution Bench in the case of Ashok Kumar Yadav, (1985) 4 S.C.C.417) (supra) . It has been observed therein thus:

"As already observed by us the weight to be given to the interview-test should depend on the requirement of the service to which recruitment is made, the source-material available for recruitment, the composition of the Interview Board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the proviso to Article 309 of the Constitution and we would be usurping a function which is not ours, if we try to re-determine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be re-writing the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious

oblique motive."

11. In this case, there is no allegation of any mala fide, or any oblique motive having decided the outcome of the interview. The determination made by the expert body with regard to the extent of marks to be assigned to the interview for selection to the Indian Administrative Service from among the Officers in the services of the State Government to be applied uniformly for all such selections from all the States and all other eligible cadres, is a decision which cannot be regarded ex facie arbitrary, or whimsical. The Regulation governing this appointment is of the year 1956. The prescription of 50%, therefore, by no means is to be regarded as being tainted with vice of arbitrariness of any kind.

12. An expert body is the most appropriate authority to decide upon the extent of weightage to be given at the interview. The selection to the post is not to be made by the Courts, but is to be made by the expert bodies vested with that authority. Matters brought before the Court by those disappointed by their non-selection cannot be treated as appeals from the decision of the Interviewing Committees and the entire process of assessment of the candidates redone by the Court.

13. In the case of Lila Dhar, (1981) 4 SCC 159, (supra), the Court had observed thus:

"There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research, It is not for Courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives.

14. The figure of 12.2 % referred to in the decision of the Constitution Bench of the Supreme Court on which the petitioner relied is not an inflexible percentage to be regarded as the maximum limit for the marks to be awarded for interviews for all the selections irrespective of the factors which are required to be considered and which factors had been adverted to in the decision of the Apex Court in the case of Lila Dhar, (1981) 4 SCC 159 (supra). Subsequent to the decision of the Constitution Bench, the Apex Court in the case of Indian Airlines Corporation Vs. Capt. K.C. Shukla, (1993) 1 SCC 17, upheld the allocation of 40% of marks for the interview; in the case of Union of India Vs. N. Chandrasekharan, (1998) 1 SCC 694, the allocation of 30% marks for interview was upheld; and, in the case of C.P. Kalra Vs. AIR India (1994 Supp (1) SCC 454), the allocation of 40% marks at the interview was upheld.

15. Moreover, the petitioner even before he appeared for the interview knew full well the mode of selection. The averments in his petition discloses that. It has been held by the Apex Court in the case of Union of India vs. N.Chandrasekharan, (1998) 1 SCC 694) (supra), that when the candidates had been made aware of the procedure and had taken part in the selection process, they cannot, after finding that they had not been selected, turn around and challenge the procedure "contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in

the assessment on confidential report". The Tribunal has rightly held that the petitioner was not entitled to challenge the selection process after having taken part in the same and only after the petitioner found that he had not been selected.

16. The writ petition fails, and it is dismissed. Consequently, WPMP. No.56989 of 2002 is dismissed.

Index : Yes
Website: Yes

Btr/mf

Copies to

1. The Secretary to Government,
Union of India ,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel and
Training, New Delhi.

2. The Secretary,
Union Public Service Commission,
New Delhi 110 001.

3. The Chief Secretary to Government,
State of Tamil Nadu,
Public (Special -A) Department,
Fort St.George, Chennai - 9.

4. A.C.Mohan Doss,
Sub Collector, Tiruvallur.

5. S.Ramachandran,
Sub-Collector, Villupuram.

6. The Registrar.
Central Adminstrative Tribunal,
Chennai bench,
High Court Buildings,
Chennai 600 104